

Senate Bill 135

By: Senators Hamrick of the 30th, Reed of the 35th and Mullis of the 53rd

AS PASSED

AN ACT

To amend Article 3 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to criminal reproduction and sale of recorded material, so as increase penalties for reproducing, transferring, selling, distributing, or circulating certain recorded material; to provide for forfeiture of certain items; to provide for additional restitution as it relates to violation of Code Section 16-8-60, relating to reproduction of recorded material, transfer, sale, distribution, and circulation; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 3 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to criminal reproduction and sale of recorded material, is amended by revising Code Section 16-8-60, relating to reproducing, transferring, selling, distributing, or circulating certain recorded material, as follows:

"16-8-60.

(a) It is unlawful for any person, firm, partnership, corporation, or association knowingly to:

(1) Transfer or cause to be transferred any sounds or visual images recorded on a phonograph record, disc, wire, tape, videotape, film, or other article on which sounds or visual images are recorded onto any other phonograph record, disc, wire, tape, videotape, film, or article without the consent of the person who owns the master phonograph record, master disc, master tape, master videotape, master film, or other device or article from which the sounds or visual images are derived; or

(2) Sell; distribute; circulate; offer for sale, distribution, or circulation; possess for the purpose of sale, distribution, or circulation; cause to be sold, distributed, or circulated; cause to be offered for sale, distribution, or circulation; or cause to be possessed for sale, distribution, or circulation any article or device on which sounds or visual images have been transferred, knowing it to have been made without the consent of the person who

owns the master phonograph record, master disc, master tape, master videotape, master film, or other device or article from which the sounds or visual images are derived.

(b) It is unlawful for any person, firm, partnership, corporation, or association to sell; distribute; circulate; offer for sale, distribution, or circulation; or possess for the purposes of sale, distribution, or circulation any phonograph record, disc, wire, tape, videotape, film, or other article on which sounds or visual images have been transferred unless such phonograph record, disc, wire, tape, videotape, film, or other article bears the actual name and address of the transferor of the sounds or visual images in a prominent place on its outside face or package.

(c) This Code section shall not apply to any person who transfers or causes to be transferred any such sounds or visual images:

(1) Intended for or in connection with radio or television broadcast transmission or related uses;

(2) For archival purposes; or

(3) Solely for the personal use of the person transferring or causing the transfer and without any profit being derived by the person from the transfer.

(d) Every person convicted of violating this Code section shall be guilty of a felony and shall be punished as follows:

(1) Upon first conviction, by a fine of not less than \$500.00 nor more than \$25,000.00, by imprisonment for not less than one year nor more than two years and the judge may suspend, stay, or probate all of any term of imprisonment, or both such fine and imprisonment;

(2) For the second conviction of violating this Code section, by a fine of not less than \$1,000.00 nor more than \$100,000.00, by imprisonment for not less than one year nor more than three years and the judge may suspend, stay, or probate all of any term of imprisonment, or both such fine and imprisonment; or

(3) For the third or subsequent conviction of violating this Code section, by a fine of not less than \$2,000.00 nor more than \$250,000.00, by imprisonment for not less than two nor more than five years and the judge may suspend, stay, or probate all of any term of imprisonment, or both such fine and imprisonment.

(e) This Code section shall neither enlarge nor diminish the right of parties to enter into a private contract.

(f)(1) Upon conviction, the following property shall be subject to forfeiture to the State of Georgia:

- (A) Any phonograph record, disc, wire, tape, videotape, film, or other article onto which sounds or visual images have been transferred in violation of this Code section;
- (B) Any reproduction equipment, scanners, computer equipment, printing equipment, or other asset used to commit a violation of this Code section; or
- (C) Property constituting proceeds only derived from or realized through a violation of this Code section;

except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.

(2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for under Code Section 16-13-49.

(g) For purposes of imposing restitution pursuant to Chapter 14 of Title 17 when a person is convicted pursuant to this Code section, the court shall consider damages to any owner or lawful producer of a master phonograph record, master disc, master tape, master videotape, master film, or other device or article from which sounds or visual images are derived, or to the trade association representing such owner or lawful producer that has suffered injury as a result of the violation of this Code section. Restitution shall be based upon the aggregate wholesale value of lawfully manufactured and authorized recorded devices corresponding to the nonconforming recorded devices involved in the violation of this Code section and shall also include reasonable investigative costs related to the detection of the violation of this Code section."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.